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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/684,191	10/06/2000	Suzanne F. Groemminger	P02848	3383

7590 01/02/2003  
Robert B Furr Jr  
Law Deoartment  
Bausch & Lomb Incorporated  
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Rochester, NY 14604

EXAMINER

OGDEN JR, NECHOLUS

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 01/02/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-9

# Office Action Summary

Application No. 09/684,191		Applicant(s) GROEMMINGER ET AL.	
Examiner Necholus Ogden		Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2002.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |                                                                                              |                                                                             |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:                                          |

***Response to Amendment***

Claims 17 and 19 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is withdrawn.

Claims 17-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Chromecek et al (5,017,238) is withdrawn in view of applicant's amendments.

Claims 17-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Sulc et al (5,580,392) is withdrawn in view of applicant's amendments.

***Response to Arguments***

1. Applicant's arguments with respect to claims 17-20 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

2. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO (00/37049).

WO '049 disclose a method and composition for rewetting and preventing deposits on contact lenses comprising a nonionic surfactant; glucose derivative and tyloxapol (see abstract). WO '049 further teach that said composition may be applied directly to the eye in the form of eye drops to a lens in the eye and the wearer should blink several times (pg. 3 and 10). With respect to the mean particle size of the solution, WO '049 teach that said solution is forced through an 0.22 micron filter which would

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lead the artisan of ordinary skill to encompass applicants less than 30 micron limitation (pg. 9).

WO '049 teaches each of the claim component and the mean particle size, however, WO '049 is silent with respect to the major diameter of less than 50 microns. However, this limitation is considered obvious to the skilled artisan because each of the claimed components are taught in their requisite proportions and one of ordinary skill in the art, absent a showing to the contrary, would expect the compositions to encompass the similar characteristics.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholas Ogden whose telephone number is 703-308-3732. The examiner can normally be reached on Monday-Thursday.

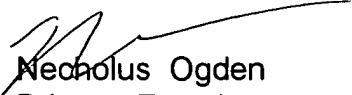
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on 703-308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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Nicholas Ogden  
Primary Examiner  
Art Unit 1751

no  
December 28, 2002